

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES A. JONES,

Plaintiff,

v.

JO ANN SKALSKI, SCOTT GRADY,  
KESHA A. MARSON, ULLA HINTZ,  
LOIS REMMERS, BRAD KOSBOB,  
KEN LAUER, SANDRA JOHNSON,  
JIM MULVEY and JOHN DOE,

Defendants.  
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ORDER

10-cv-766-slc<sup>1</sup>

Pro se plaintiff James A. Jones is proceeding on a claim that defendants violated his rights under the Eighth Amendment by preventing his release from prison for several months. In particular, plaintiff contends that he was entitled to early release for completing a “challenge incarceration program” under Wis. Stat. § 302.045, but defendants refused to inform the sentencing court, as they were required to do under § 302.045(3m). Now before the court is plaintiff’s motion for leave to amend his complaint under Fed. R. Civ. P. 15.

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<sup>1</sup> I am exercising jurisdiction over this case for the purpose of this order.

The differences between the original and amended complaint seem primarily cosmetic. For example, plaintiff adds the first names of several defendants that he identified previously by their last names only and he corrects the spelling for the names of other defendants. I have amended the caption accordingly.

Plaintiff does not add any new facts or defendants in his amended complaint. Although he adds two claims, neither was necessary and one is not a claim at all. First, he adds a claim under the Eighth Amendment. This was unnecessary because, in the screening order, dkt. #11, I construed his complaint as raising a claim under the Eighth Amendment even though he did not identify that right explicitly. Bartholet v. Reishauer A.G. (Zurich), 953 F.2d 1073, 1078 (7th Cir. 1992) ("[T]he complaint need not identify a legal theory, and specifying an incorrect theory is not fatal.").

Second, he adds a count for “conspiracy,” but there is no separate cause of action for “conspiracy” by itself; it is simply a manner of holding the defendants jointly liable for a violation of the law. Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir.1988). To state a claim, plaintiff must identify a constitutional violation; “adding the word ‘conspiracy,’ . . . adds nothing.” Stanley v. Litscher, 213 F.3d 340, 343 (7th Cir. 2000). If plaintiff can prove at summary judgment at trial that two or more defendants conspired to violate his Eighth Amendment rights, he may be entitled to relief, but the conspiracy need not be pleaded as a separate claim.

Plaintiff's amended complaint seems to serve little purpose, but he points out that he was entitled to file it under Fed. R. Civ. P. 15(a)(1)(B) because fewer than 21 days has passed since defendants filed their answers. Accordingly, I will accept plaintiff's amended complaint as the operative pleading. However, petitioner should be aware that the Eighth Amendment is the sole legal theory under which he is proceeding. Plaintiff includes other legal theories in his amended complaint, but I concluded in the screening order that each of the other legal theories failed to stated a claim upon which relief may be granted. Nothing in plaintiff's amended complaint calls that conclusion into doubt.

#### ORDER

IT IS ORDERED that plaintiff James Jones's motion for leave to amend his complaint, dkt. #26, is GRANTED, and his proposed amended complaint, dkt. #27, is ACCEPTED as the operative pleading.

2. The sole claim on which plaintiff is proceeding is his claim that defendants Jo Anne Skalski, Scott Grady, Kesha Marson, Ulla Hintz, Lois Remmers, Brad Kosbob, Ken Lauer, Sandra Johnson, Jim Mulvey and John Doe kept him incarcerated beyond the date allowed under state law, in violation of the Eighth Amendment.

3. Defendants may file an amended answer in response to the amended complaint or they may stand on their original answer if they do not believe the amended complaint

requires any changes to their answers.

Entered this 5th day of April, 2011.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge